IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11726 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

SAMUBEN DUNGARBHAI - Respondent(s)

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Appearance :

MR DIPEN DESAI, AGP for Petitioner(s) : 1,
MS MAMTA R VYAS for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 01/09/2005

ORAL JUDGMENT

In the present petition, the petitioner State Government has challenged the legality of the award dated 7th May 2002 passed by the Labour Court, Surendranagar by which the termination of the respondent was set aside and

directions were given to reinstate the respondent with 50 per cent backwages.

2. Alleging that her services were terminated illegally on 1.4.90 by the petitioner, the respondent approached the Labour Court by filing reference (LCS) No.114/93. The Labour Court allowed the reference to the above mentioned extent ignoring the opposition of the petitioner. The Labour Court observed that the petitioner has not produced the muster rolls and attendance registers containing the name of the respondent nor has the petitioner produced seniority list. The Labour Court, therefore, concluded that the evidence of the employer was not sufficient. The Labour Court, therefore, concluded that the petitioner breached the provisions of section 25-F, G and H of the Industrial Disputes Act.

3. The Labour Court in my view committed error in allowing the reference. Nowhere the Labour Court has come to the conclusion that the respondent was engaged for more than 240 days in 12 calendar months preceding her termination. The observation that the petitioner-employer did not produce sufficient evidence would be

contrary to the settled legal position. It was primarily the duty of the workman to establish through reliable evidence the fact of having worked more than 240 days during the relevant period. This legal position is well settled by series of decisions of the Hon'ble Supreme Court (see AIR 2002 SC 1147). The respondent led no evidence whatsoever to prove that she was engaged for more than 240 days. The petitioner was not called upon to produce any specific record. In that view of the matter, no fault can be found with the employer for not producing documents. To establish that the respondent had not worked for more than 240 days, the averment of the respondent that she had worked so had been denied from the very outset. To come to the conclusion that the petitioner breached the provisions of section 25-G and H of the Industrial Disputes Act also, there is absolutely no basis or foundation laid by the Labour Court in its impugned award. Who were the persons retained while the respondent was disengaged and who were the persons employed after her termination have not been discussed. It is perhaps not even the pointed case of the respondent that her juniors were retained or new persons were engaged after her termination. On all counts therefore, the impugned award of the Labour Court cannot be

sustained.

4. In the result, the petition is allowed. The impugned award of the Labour Court is set aside. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)